IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.56/2006
AND
CIVIL APPLICATION NO.113/2006

Shri Gurudas Vishram Pagui & ors. ..... Appellants.

V/s.

Shri Venkatesh Vithal Pai
(deceased) represented by his legal
heirs. ..... Respondents.

Mr. S.M. Walawaikar, Mr. T. George John and Ms. Kataky K.M. Advocates for the appellants.

Mr. Sudesh Usgaonkar and Ms. P. Kamat, Advocates for the respondents No.1(a), 1(b) and 1(c).

CORAM : P.V. KAKADE, J.

DATE : 24TH NOVEMBER, 2006.

P.C.

The appellants-defendants have preferred this appeal against the judgment and order passed by the Addl. District Judge, South Goa, Margao allowing the appeal of the plaintiff and setting aside the order passed by the trial Court, dismissing the plaintiff's suit for perpetual injunction against the defendants.

2. Heard learned Counsel for the parties. Perused the record.

The plaintiff since deceased is represented through his legal representatives, filed suit for permanent injunction, submitting therein that he was owner of the property known as “Mokod Pedacodil Gorbata” also known as “Pedacodil Garbhat” alias “Gorjin” alias “Tamna Talem” situated in Village Canacona. The said property was bounded on the east by the stone wall belonging to Deo Pardeshi, on the west by the property “Gharbhat” belonging to the heirs of Santu Ava Pai, on the south by stair case of stones and on the north by the property of the family of Nagarcenkars. The said property is surveyed under No.23/19 and partly under Survey No.19/3 of Village Canacona. It was claimed that towards the southern side of survey No.23/19, there is a staircase of stones and beyond the staircase, to its south there is a property of heirs of Motibai Das Kamat, which also goes upto the top of the hill which is divided into two parts. By way of amendment of the plaint, it was further claimed that part of the property surveyed under No.19/3 bounded on the east by the wall of the defendants and and others, on the west by public road, leading to Village Mokard, north by the property of plaintiff under Survey No.25/9 and south by staircase of stones of defendants which was said to be the suit property. It was the case sought to be made out by the plaintiff that he was in enjoyment and possession of the property for last many years. However, recently, the defendants who are mahajans of the temple, claimed right

over the suit property and tried to interfere with the possession. Therefore, the suit came to be filed for injunction. The defendants contested the suit, inter alia, denying the allegation that the suit property belongs to the plaintiff. It was the case sought to be made on behalf of the defendants that in fact, the plaintiff's property was a very small piece of property wherein he had his residential house only and the cowshed of the plaintiff was located in the defendants' property. It was further claimed that the plaintiff was not having any property in survey No.19/3 and 23/19. It was further contended that the plaintiff was owner of the western half of the property surveyed under No.23/19; whereas the eastern half comprised of jack fruit trees, cattle shed belonged to the defendants and they were in possession of the said property and on such and other grounds, the suit was sought to be dismissed.

3. The learned trial Judge, after recording the evidence, settled the issues and on the basis of the evidence on record, came to the conclusion that the plaintiff failed to prove that he was owner in possession of the property as alleged. It was further held that the plaintiff also failed to prove that he was possessing the property by virtue of ownership for over 45 years and as such, the suit for perpetual injunction came to be disposed of. The appeal was carried to the District Court. The learned

Addl. District Judge, after hearing both the parties, did not concur with the findings recorded by the trial Court and concluded that the plaintiff had proved the title of the suit property and the fact that their possession was threated by the defendants and as such, the appeal was allowed and the suit for perpetual injunction came to be decreed. Hence, the present appeal.

4. At the outset, it may be noted that the appellants pointed out several so called questions of law for consideration. However, it is apparent on perusal thereof that most of them are in fact questions of fact and, therefore, cannot be gone into at this stage.

5. At this juncture, it must be noted that the learned Counsel for the appellants sought to bring on record certain documents in the second appeal. However, since the said civil application for production of documents is not registered, I need not take cognizance thereof. Even if it is assumed for the moment the civil application is to be determined, it is obvious that there is absolutely no ground shown as to why those documents were not produced either before the trial Court or before the first appellate Court at the time of adjudication of the proceedings. It is pointed out that these documents were sought to be produced in review

petition against the order passed by the lower appellate Court before the said Court, however, the said review petition came to be dismissed.

6. Under the circumstances and in view of the issues involved in the present matter, I do not see any reason why these documents should be allowed to be taken on record at this belated stage in second appeal.

7. The learned Counsel for the appellants submitted that the Judgment and Order passed by the lower appellate Court was perverse and contrary to the evidence on record inasmuch as in the absence of specific challenge by the plaintiff in the suit as to the title of the defendants in relation to the suit property and that the lower appellate Court suo motu made out a new case in favour of the plaintiff and held that the grant of the suit property by the Administrator of Devasthan in favour of the defendant No.5 does not create any title in it. It further held that the eastern boundary of the plaintiff's property is a dotted red lines around the temple of the defendant No.5 in the survey plan of the suit property.

Initially, it must be noted that this cannot be, by any stretch of imagination, considered as substantial question of law. The Judgment of the lower appellate Court is sought to be attacked on the ground that it is perverse only because the lower appellate Court while discussing the

evidence of title of the plaintiff to the suit property, also considered the evidence of the defendants to hold that they did not have any title over the suit property and, therefore, it cannot be said to be perverse, but such a finding was required to be recorded on the basis of the pleadings of the parties.

8. Apart from these aspects, on perusal of the Judgment of both the Courts below, it is apparent that the issue was clinched in favour of the plaintiff when certain documents were brought on record in the course of first appeal by order of the Court. It was admittedly a land registration certificate regarding description and inscription. The lower appellate Court rightly observed that once the said land registration certificate was produced, the provision of Article 953 of the Civil Code stood attracted. The provision clearly provides that the inscription in the registration of title conveying ownership, irrespective of other formalities, operates transfer of possession of such property in favour of the person in whose name the inscription stood. In other words, the said registration by virtue of Article 953 of the Civil Code had conclusive value in respect of the holding of the property and, therefore, in my considered view, the learned lower appellate Court has rightly concluded that the plaintiff has proved his title to the suit property along with possession thereof.

9. The lower appellate Court is also seen to have appreciated the entire evidence in proper perspective and, therefore, I do not see any reason to interfere in this regard. It is established principle of law that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. In the present case before us, there was not even a chance to draw any other conclusion, than the one drawn by the lower appellate Court. Therefore, it must be held that the plaintiff's suit was deserved to be decreed.

10. In the result, there is no merit in the appeal and the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 113/2006 also stands disposed of with no order as to costs. Interim order, if any, stands vacated.

P.V. KAKADE, J.

ssm.